Abernathly, 174 S. W. 682, was governed by a statute which expressly declared void an instrument so made, and the dictum is therefore misleading unless qualified as above suggested.

BILLS AND NOTES.—NOTICE OF DEFECT.—A bank as indorser of a promissory note brought action to recover from the maker. The bank had no knowledge of equities that in fact existed between the original parties, but it did have knowledge of circumstances that would have caused suspicion in the mind of an ordinarily prudent man. The jury was instructed that nothing short of bad faith would overthrow the plaintiff's position as holder in due course. This was *held* error and a judgment for the bank was reversed. *Boxell* v. *Bright Nat. Bank of Flora* (Ind. App. 1916), 112 N. E. 3.

The decision brings again to the fore the question as to what constitutes such notice of an infirmity or defect as to defeat the character of a holder in due course. The doctrine followed in the principal case—that a knowledge of circumstances causing a mere suspicion is sufficient to prevent the holder from being a holder in due course—would seem to place an impediment upon the negotiability of commercial paper, and has for that reason been repudiated in most jurisdictions. *McNamara* v. *Jose,* 28 Wash. 461; *Valley Savings Bank* v. *Mercer,* 97 Md. 478; *Mass. Nat. Bank* v. *Snow,* 187 Mass. 159, 72 N. E. 959. Numerous other states repudiating such a doctrine are noted in articles dealing with this subject in 5 MICH. L. REV. 466 and 11 MICH. L. REV. 67. As some of these states had formerly held with the court of the instant case, but later abandoned that view, it is sometimes remarked that such a rule has been universally repudiated. This is too broad a statement, as the present case illustrates. Though this case arose before the adoption of the Negotiable Instruments Law, the decision would have been the same though governed by that law. *Bright Nat. Bank of Flora* v. *Hartman,* (Ind. App. 1915), 109 N. E. 847.

BULK SALES ACT—TRANSFER IN PAYMENT OF A CREDITOR.—A grocer assigned his stock in trade to a creditor to whom he was indebted to an amount greater than the value of the goods, under an agreement that the creditor should sell them and apply the proceeds to the debt and turn any balance over to the debtor. The Bulk Sales Act, providing that a sale or delivery of a stock in trade without certain notice to creditors should be presumed to be fraudulent and void as to such creditors, was not complied with, but there was no bad faith. *Held,* the transfer was valid as to other creditors. *Des Moines Packing Co.* v. *Uncaphor* (Iowa 1916) 156 N. W. 171.

It is not clear upon what theory the decision rests. The court seems to decide that the transfer was one which the act contemplated and was by it rendered presumptively fraudulent, but that this presumptive evidence of fraud was rebutted by the evidence of actual good faith. The syllabus, however, indicates that the transaction was not within the Act and there is some slight indication in the opinion that this was the ground the court based its decision upon. The court pointed out that a chattel mortgage, under

which the mortgagee could at once take possession of the property and foreclose the mortgage, would not come within the Act, and decided it was not the intention of the legislature to prevent creditors from securing their claims. The court distinguished the principal case from *Gallus* v. *Elmer,* 193 Mass. 106, 78 N. E. 772, 8 Ann. Cases 1067, 12 L. R. A. (N. S.) 174 (holding such a transfer to a creditor to secure a claim came within the Bulk Sales Act and was void) on the ground that the Massachusetts Act was broader. The Massachusetts Act declares sales in violation thereof to be fraudulent and void as to creditors, while the Iowa statute only presumes such to be fraudulent and void. This would indicate that the court in the principal case considered the transaction to be within the Act. If the decision rests upon the theory that the presumption of fraud is rebutted by the evidence of good faith, the transaction coming within the Act, it would seem to be in accord with most of the cases on the subject. But if it rests upon the ground that the transaction does not come within the Act, it makes the authorities upon the point about evenly split. In *Sampson* v. *Brandon Grocery Co.,* 127 Ga. 454, 56 S. E. 488, 9 Ann. Cases 331, 12 L. R. A. (N. S.) 174 (in accord with the Massachusetts case) the Act in question conclusively presumed sales in violation thereof to be fraudulent and such a transaction was held to come within the Act. In *Hart* v. *Dean,* 93 Md. 432, 49 Atl. 661, under a Bulk Sales Act declaring a sale in violation thereof to be only presumptively fraudulent, the court held a transfer to a creditor of a stock in trade in satisfaction of his claim and for an additional consideration, came within the statute, but that the presumption of fraud was rebutted by the facts. In *Peterson* v. *Doak,* 43 Wash. 251, 86 Pac. 663, 12 L. R. A. (N. S.) 174, under a Bulk Sales Act declaring sales in violation thereof to be fraudulent and void, the court held a transfer such as that in the principal case did not come within the Act. The court stated that a debtor there had a right to secure a creditor's claim and since there was nothing left for other creditors there was no occasion for notifying them.

BULK SALES ACT—WHO ARE CREDITORS.—A tenant, who owed one month's rent on a lease which had four years to run, conveyed his stock of merchandise in bulk to defendant, without giving the landlord the notice required by the Bulk Sales Act to be given to creditors. There was an existing continuing liability on the part of the tenant to pay rent for the rest of the term. The landlord thereafter obtained a judgment for one month's rent which had accrued after the transfer and sought to reach the goods conveyed. *Held* the landlord was a creditor within the meaning of the act and could subject to his claim the goods in defendant's hands. *Apex Leasing Co.* v. *Litke* (1916), 158 N. Y. Supp. 21.

The principal case seems to be in accord with the weight of authority in holding a simple contract creditor to be protected by the Bulk Sales Acts. *Rabalsky* v. *Levinson,* 221 Mass. 289, 108 N. E. 1050; *Eklund* v. *Hopkins,* 36 Wash. 179, 78 Pac. 787; *Scheve* v. *Vanderkalk,* 79 Neb. 204, 149 N. W. 401. But New Jersey holds that the creditor must have reduced his claim to a judgment in order to avail himself of the Act. *Muller v. Hubech-*